IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE A.K.RAJAN

Criminal Appeal No.76 of 2000

1.Durai
2.Thangaraj
3.Alagu ..... Appellants

-Vs-

State represented by
Inspector of Police
Maniayachi Police Station
Crime No.412/92
Tuticorin District. ..... Respondent

Prayer: Criminal Appeal preferred against the conviction and sentence passed by the Additional Sessions Judge at Tuticorin in S.C.No.159 of 1996 dated 12.11.1999.

For Appellants : Mr.C.Christopher
for M/s.L.Mahendran (A1 and A2)
Mr.S.Shanmuga Velayutham (A3)

For Respondent : Mr.E.Raja
Addl. Public Prosecutor

:JUDGMENT
(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM,J.)
The appellants, A.1 to A.3 were convicted for the offence under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment.

2. The facts leading to the conviction are as follows:
"a) The deceased Sundararaj was the Nattanmai in Maruthanvalvu village. P.W.1 Karuppi is the wife of P.W.2 Periya Karuppan. P.W.3 Alagarsamy is the younger brother of P.W.1. The deceased is the son of P.W.1 and P.W.2. P.W.4 , Inban is the brother of P.W.5 Vanitha. All are residing in the same village. A.1, Durai is the son of A.2 Thangaraj. They are also residing in the same village. A.3, Alagu belongs to nearby village by name Govindapuram. P.W.5, Vanitha who is the sister of Inban, was studying in a tutorial college in a nearby town called Puliyampatti run by the brother of

A.3. A.3 loved P.W.5 Vanitha. Therefore, he often visited her house in Maruthanvalvu village to meet her. This was objected to by P.W.4 and his family members. When the matter was reported to the deceased Sundaraj, Nattanmai, he warned A.3 that he should not come and visit the village any more. Due to this, there was a misunderstanding between the deceased and A.3. On that day, when A.3 was reprimanded by the deceased, he threatened him that he would see to it within four days.

b) On 25.11.1992 at about 8.00 a.m, P.W.1 Karruppi, her husband P.W.2 Periya Karuppan, her brother P.W.3 Alagarsamy and the deceased Sundararaj went to their field for planting chilies and they were returning from the field to their house. When they came near the bus stop, they noticed that A.3 Alagu was quarreling with P.W.4 Inban. At that time, A.1 and A.2 were also standing there in support of A.3. The deceased Sundararaj, who came to the spot again reprimanded A.3 and asked him as to why he came to his village in spite of warning. Due to the shouting, the accused got provoked. Therefore, while A.3 caught hold of the deceased from standing behind, A.1 with iron spear stabbed on the left side stomach of the deceased and A.2 with iron rod beat on the right side stomach and again on the neck of the deceased. The deceased fell down. P.W.1 and P.W.2 raised alarm. Therefore, all the accused ran away from the scene.

c) Since the condition of the deceased was serious, he was taken in a bus to the hospital, but on the way to Puliampatti, the deceased died in the bus itself. Therefore, the body of the deceased was taken in a cart and brought to the bus stop where the occurrence had taken place. P.W.1 and P.W.3 went to the Police station at Maniachi. P.W.1 gave a complaint to P.W.7, the Sub Inspector of Police. Ex.P.3 is the FIR.

d) The Inspector of Police who had not been examined before the Court, on receiving the message came to the scene of occurrence at about 11.30 a.m and prepared observation mahazar and rough sketch. He also conducted inquest and prepared inquest report Ex.P.17. Thereafter, the dead body was sent for post-mortem.

e) P.W.9, the Doctor conducted post-mortem and noticed three injuries on the body. He issued post-mortem certificate Ex.P.7, giving opinion that the deceased would appear to have died of shock and hemorrhage due to the injuries.

f) In the meantime, A.1 to A.3 surrendered on 27.11.1992. Then the Inspector of Police obtained police custody and on confession of A.2 , the iron spear M.O.1 and Iron rod, M.O.2 were recovered.

g) P.W.12, another inspector of Police took up further investigation and examined the other witnesses. He sent M.Os for chemical examination and ultimately, filed the charge sheet against the accused for offence under Section 302 r/w 109 IPC.

h) During the course of trial, P.W.1 to 12 were examined, Ex.P.1 to P.22 were filed and M.O.1 to 6 were marked.

i) When the accused were questioned, they simply denied their complicity in the crime.

j) The trial Court ultimately concluded that the prosecution has established its case beyond reasonable doubt and convicted all the accused under Section 302 r/w 34 IPC. This Judgment impugned convicting the accused is the subject matter of challenge before this Court in the common appeal filed by all the three accused."

3. When the matter was taken up for final disposal, it was represented that Mr. C.Christopher has entered appearance on behalf of A.1 and A.2, and Mr. S. Shanmughavelayutham has entered appearance on behalf of A.3.

4.The learned counsel for A.1 and A.2 while assailing the judgment of conviction, would submit that the complaint, which had been given by P.W.1 and registered by the police as admitted by P.W.1, has not been placed before the trial Court and the evidence of P.W.1 to 4, eye-witnesses is not consistent with reference to the motive and the medical evidence also does not corroborate the ocular evidence adduced by the witnesses P.W.1 to 4 and as such, A.1 and A.2 are liable to be acquitted.

5. Mr. Shanmugavelayutham, the learned counsel for A.3 would submit that the evidence available on record would not conclusively prove that A.3 had the motive to attack the deceased and in any event, it can not be said that A.3 had shared the common intention while A.1 and A.2 attacked the deceased and as such, A.3 is liable to be acquitted.

6. We have heard the learned Additional Public Prosecutor with regard to the above aspects.

7. We have carefully considered the rival contentions urged by the parties and gone through the entire evidence available on record.

8. According to the prosecution, A.3 loved P.W.5 Vanitha and in order to meet her, he frequently visited her village. This was objected to by the deceased, Nattanmai by way of supporting P.W.4, the brother of the said Vanitha. Aggrieved over this, A.1 to A.3 challenged the deceased that they would see to it within four days. Accordingly, on 25.11.1992 at about 8.00 a.m, all the three accused came to the village and took up quarrel with P.W.4 and on seeing the deceased at the spot, A.3 caught hold of the deceased from behind and A.1 and A.2 attacked the deceased.

9. Though in Ex.P.1, it is stated by P.W.1 that four days prior to the date of occurrence, A.1 to A.3 challenged the deceased that they would see to it within four days, P.W.1 has not chosen to mention about the presence of A.1 and A.2 in her evidence. Not only that, the presence of A.1 and A.2 in the first incident has not been spoken to by P.Ws.2 to 4, the other eye-witnesses. Even according to the prosecution, there is no direct motive for A.1 and A.2 to attack the deceased. On the other hand, it is the case of the prosecution that A.1 and A.2 came to the spot and attacked the deceased only to support A.3. Unfortunately, no material has been placed before the Court to establish that A.1 and A.2, who are the resid ents of the village in which the deceased is residing, attacked the deceased Nattanmai in support of A.3. As a matter of fact, A.3 does not belong to the village Maruthanvalvu and he belongs to nearby village Govindapuram. Though it is mentioned in Ex.P.1 that A.3 is related to A.1 and A.2, there is no material to indicate that A.1 and A.2 had the intention to attack the deceased in support of A.3.

10. On going through the evidence of P.W.1 to P.W.4, the eyewitnesses , it is clear that A.3 caught hold of the deceased from behind and at that time, A.1 and A.2, came and attacked the deceased. In the cross examination, P.W.4 would specifically state that there was a wordy quarrel between himself and A.3 and the said quarrel continued for 15 minutes. It is not clear from the evidence of these witnesses that during that time, A.1 and A.2 were standing there with weapons. On the other hand, it is the categorical statement of P.W.4 that while A.3 caught-hold of the deceased from behind, A.1

and A.2 came there with weapons and attacked the deceased. Under those circumstances, we are unable to hold that A.3 had shared the common intention of A.1 and A.2, who attacked the deceased with dangerous weapons like spear and iron rod, as a result of which the deceased sustained serious injuries resulting in his death.

11. This aspect could be seen from yet another angle. It has been elicited from P.W.3 Alagarsamy, the brother of P.W.1 that on the very same day, a case had been filed against the said Alagarsamy, Kuttyraj, brother of the deceased and others for having caused injury by putting acid on the face of one Mala, daughter of A.2. From the evidence of P.W.1 and P.W.12, the Inspector of Police, it could be noticed that the said occurrence had taken place on the very same day i.e., on 25.11.1992 in which Mala was injured and with reference to the said incident, a case has also been registered against P.W.3 and others including the brother of the deceased. These things would make it clear that A.1 and A.2 had the motive to attack the deceased or any member of the family of the deceased to take revenge on the incident in which A.2's daughter was injured. In the light of the above circumstances also, we are constrained to hold that A.3's quarrel with P.W.4 had nothing to do with the intention of A.1 and A.2 to come to the spot to attack the deceased. Even assuming that the entire evidence adduced by P.W.1 to P.W.4 is believed with reference to the part played by A.3, it cannot be concluded that when A.3 caught-hold of the deceased, he knew that A.1 and A.2 would attack the deceased.

12. In view of the discussion made above, the conviction and sentence imposed on A.3 are liable to be set aside. Since all the witnesses have consistently stated that A.1 and A.2 attacked the deceased and caused injuries, which fact is corroborated by the medical evidence, we are to hold that the conviction and sentence imposed on A.1 and A.2 are perfectly justified.

13. In the result, (i) the conviction and sentence imposed on A.1 and A.2 are confirmed and the appeal is dismissed in respect of A.1 and A.2. The trial Court is directed to take steps to secure the custody of the accused 1 and 2 to undergo the remaining period of sentence.

(ii) As regards A.3, the appeal stands allowed and the conviction and sentence imposed on him are set aside and the he is acquitted of the charge. The bail bond executed by A.3 shall stand cancelled.

Index:Yes
Internet:Yes
Ksr

To
1. The Addl. Sessions Judge, Tuticorin
2. -do- thro' The principal Sessions Judge, Tuticorin
3. The Superintendent, Central Prison, Palayamkottai
4. The Inspector of Police, Maniyachi Police Station.

5. The Public Prosecutor, High Court, Maddras
6. The District Collector, Tuticorin
7. The Director General of Police, Chennai.